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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/445,043	03/20/2000	IAN BAIRD-SMITH	350013-65	9395
34205	7590	01/11/2008	EXAMINER	
OPPENHEIMER WOLFF & DONNELLY LLP 45 SOUTH SEVENTH STREET, SUITE 3300 MINNEAPOLIS, MN 55402			HYLTON, ROBIN ANNETTE	
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
01/11/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

*H*

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/445,043	BAIRD-SMITH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Robin A. Hylton	3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 31 October 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3,4,8-11 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3,4,8-11 and 13 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____                                                         | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 31, 2007 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1,3,6,9,10, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Sekiguchi et al. (JP 62-122962).

Sekiguchi discloses a container assembly comprising a container 1 having a second cam and follower pair, a flexible membrane 2, an adhesive seal between the flexible membrane and the container, a rigid cap 3 having a resilient deformable member 5 juxtaposed to the flexible membrane, a first cam and follower pair, a laminar member and annular skirt depending from the laminar member, wherein the laminar member is spaced from the flexible membrane by a distance less than the maximum possible extension of the flexible membrane toward the laminar member.

Figure 1 depicts the rigid cap attached to the container with an airspace between the flexible membrane 2 and the rigid cap 3. The fourth paragraph on page 4 discloses the expansion and contraction of the airspace 4 prevents rupture of the flexible membrane. The airspace is contracted and expanded by movement of the flexible membrane. It can be seen that the lowermost point of the laminar member is spaced from the flexible membrane by a

distance less than the maximum possible extension of the flexible membrane towards the laminar member.

***Claim Rejections - 35 USC § 103***

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sekiguchi.

Sekiguchi discloses the claimed container assembly except for the resiliently deformable member comprising a foamed material.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the resiliently deformable member of a foamed material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sekiguchi in view of Hardt (US 4,328,905).

Sekiguchi teaches the claimed closure except for a pull tab hingedly attached to the membrane.

Hardt teaches a membrane closure having a pull tab hingedly attached thereto.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a hingedly attached pull tab to the membrane of Sekiguchi. Doing so would provide a graspable member to allow for easy removal of the membrane from a container mouth.

6. Claims 1,3,4,6,8-10, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hiroshi (JP 6-219464) in view of Sekiguchi.

Hiroshi discloses a container assembly comprising a container **1** having a second cam and follower pair, a flexible membrane **3**, an adhesive seal **4** between the flexible membrane and the container, a rigid cap having a resilient deformable member **6** juxtaposed to the flexible membrane, a first cam and follower pair, a laminar member **5** and annular skirt **7** depending from the laminar member. Hiroshi is silent regarding the laminar member being spaced from the flexible membrane by a distance less than the maximum possible extension of the flexible membrane toward the laminar member.

Sekiguchi teaches it is known to provide a container assembly wherein the laminar member is spaced from the flexible membrane by a distance less than the maximum possible extension of the flexible membrane toward the laminar member.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of providing the laminar member being spaced from the flexible membrane by a distance less than the maximum possible extension of the flexible membrane toward the laminar member. Doing so provides a container liner seal that is less likely to rupture do to pressure build-up within the sealed container.

Regarding claim 4, the outer portion **2** of the can comprising the screw threads has an upper edge that is considered to be a flange.

Regarding claim 9, Hiroshi teaches the claimed invention except for the flexible membrane being made of a metal foil. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the flexible membrane of metal foil, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Hardt.

Hiroshi teaches the claimed closure except for a pull tab hingedly attached to the membrane.

Hardt teaches a membrane closure having a pull tab hingedly attached thereto. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a hingedly attached pull tab to the membrane of Hiroshi. Doing so would provide a graspable member to allow for easy removal of the membrane from a container mouth.

***Response to Arguments***

8. Applicant's arguments filed October 31, 2007 have been fully considered but they are not persuasive.

Applicant agrees that the patent to Sekiguchi et al. teaches there is an air space between the cap top wall, i.e., laminar member, and the flexible membrane and that the space of the air space can be made can be made bigger than that shown in Fig. 1 of Sekiguchi. See the paragraph bridging pages 2 and 3 of the remarks filed October 31, 2007

Sekiguchi discloses in the drawings a spatial relationship between the laminar top wall and the flexible membrane. The flexible membrane can clearly deflect in a direction opposite that which is shown and for the same distance that is shown. Since the laminar member includes a downwardly projecting indented portion that protrudes into the air space, the distance between this portion of the laminar member and the flexible membrane is less than the distance between the central portion of the laminar member (that is within the indented portion) and the flexible membrane. Although the drawings are not said to be drawn to scale, Fig. 1 clearly shows that the spatial relationship of the instant claims is met by the structure of Sekiguchi. The

flexible membrane is capable of flexure to a point that would allow it to reach the downwardly projecting portion before it reaches its maximum flexure in the direction toward the laminar member and more so if the air space is increased as applicant has previously agreed.

Turning to the remarks directed toward the combination of Hiroshi and Sekiguchi, applicant asserts Sekiguchi is attempting to solve a problem different from applicant (page 5, paragraph 4), the distance between the laminar member and the flexible membrane is not explicitly disclosed, and applicant has achieved unexpected results.

It is submitted that heat sterilization and cooking of food both require high temperature. Additionally, contents within a container that is subjected to high heat will expand and cause a reaction in the container. Thus, the disclosure of the structure of Sekiguchi is relevant to the instant claims.

The matter of the drawings and what taught and reasonably suggested therein has been previously addressed above. No additional remarks are provided.

Applicant asserts unexpected results are obtained by the instant invention. However, applicant has not provided evidence of said unexpected results.

### ***Conclusion***

9. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, THIS ACTION IS MADE FINAL even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

11. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

12. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_  
Signature\_\_\_\_\_

Date\_\_\_\_\_

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

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